

(Recess)

THE COURT: Let's get the jury.

As to the pending question, let's just see what time we stop tomorrow.

(WHEREUPON, the jury enters the proceedings.)

BY MR. TASKIER

Q. Dr. Warren-Boulton, let's reprise for a second so we can get back to where we were.

I believe you testified that you had done an overpayment analysis in which your overpayment was 421 million, and the value of the company was \$1,194,000,000; is that correct?

A. That is correct.

Q. And then you have just testified that you decided to look at four outside valuations by others to determine whether that was reasonable, and you came upon four valuations, two by Mr. Peterson, that you described as bookends, 585 million to 2 billion, and, additionally, you looked at a valuation by the investment bankers at Morgan Stanley which came up with a 1.17 billion valuation. Then you looked at a conditional bid by Lotus for \$1.3 billion in March of 1994.

Does that fairly summarize your testimony?

A. That is correct. The other only thing to note is that those were all valuations just of WordPerfect and don't

1 include QuatroPro, so when we're going to start to do
2 comparisons sometimes we have to add back in the value of
3 QuatroPro of 155 million. We're going to do a little apples
4 to apples adjustments.

5 Q. We have now done your own overpayment analysis, you
6 have four outside valuations. Did you now turn, as I
7 believe you testified, to doing additional valuations based
8 on financial information from other outside sources?

9 A. Yes, I did. As an economist I tried to just do my own
10 evaluation of the valuation of the value of WordPerfect and
11 QuatroPro.

12 Q. And the way you approach that, is that similar to the
13 way that the Morgan Stanley investment bankers might have
14 approached it?

15 A. I certainly believe so, yes. I think that is the
16 standard approach to valuations.

17 Q. So let me understand, was WordPerfect at this point in
18 time a private company or --

19 A. Yes.

20 Q. -- or a public --

21 A. It was private.

22 Q. It was a private company. And it wouldn't have been
23 traded on the stock market?

24 A. No, and that is our problem in coming with a valuation,
25 so we are stuck with trying to value a privately held

1 company.

2 Q. But there are ways to value privately held companies
3 that are commonly used?

4 A. Yes, several.

5 Q. Can you give us some examples of how you might go
6 about, and how you did go about valuing privately held
7 companies?

8 A. Well, maybe I can go back to my house. If you're
9 thinking of buying a house in the neighborhood and you are
10 wondering what is a good bid to make, you might want to sort
11 of -- you need to see if you can find out how much that
12 house sold for recently. But let's suppose, you know, that
13 that house has not sold in 20 years and so the previous
14 valuation does not tell you very much about what to bid on
15 at the moment.

16 So what you probably do is you do what real estate
17 agents do is you look at comparables, and you go out and you
18 sort of say suppose that I look at houses that were sold in
19 this neighborhood that I am looking at that were similar to
20 my house in as much as possible, and I might try to use
21 those valuations to come up with a bid on the value for my
22 house.

23 Now, even if they are in the same neighborhood and look
24 similar, and they might be different sizes, you know, three
25 bedrooms, four bedrooms and mine is two bedrooms. And so

1 one way of doing this would be to look at how much similar
2 houses in your neighborhood sold for over the last year or
3 two, and figure out how much that was, say, per square foot,
4 per bedroom, and then multiply that times what your house
5 looks likes. And that would give you a reasonable idea of
6 what your house would be likely to sell for or what you
7 could bid for. That is basically I think the approach that
8 you have to take.

9 Q. Did you do that with certain companies?

10 A. Yes. So what I did is I began by looking at a group of
11 companies that WordPerfect at the time identified as
12 comparable for purposes of making comparisons. So these
13 were the companies that WordPerfect thought that it was
14 similar to in terms of valuation. They are quite familiar
15 ones. Intoit, for example, makes TurboTax software, in case
16 you have used it. Microsoft, of course, we all know. And
17 Love -- Corel is the company that -- that Novell actually
18 sold this product to. So there is a number of companies
19 here.

20 And what you can do is you can look at the stock market
21 value, not just the stock market but the total value of
22 those companies, and you can ask the question what is that
23 valuation relative to your earnings? Okay. And this is a
24 value to earnings ratio. The earnings that I am using here
25 in particular is something called EBIDA, E-B-I-D-A, which is

1 earnings before interest, taxes, depreciation and
2 amortization. It is a particular measure of earnings. So I
3 am looking at the ratio of value to earnings for all of
4 these companies.

5 You know, even though WordPerfect says they are all
6 comparable, as you'll see there is quite a range here. It
7 ranges from 9.2 times earnings to a valuation of about 16.3
8 times earnings. So what I do is I take the median, half
9 above and half below as my best estimate from this of what
10 I'm going to now apply to WordPerfect. And the median is
11 11.6 times earnings.

12 Q. How do you get from 11.6 times earnings to a value of
13 WordPerfect?

14 A. Well, I have to multiply that times the earnings of
15 WordPerfect, during this period of time by median from my
16 eight companies, and the value of the earnings of
17 WordPerfect with EBIDA was 78 million. I multiply that
18 times my median valuation multiple of 11.6 and I get 903
19 million.

20 Q. What would WordPerfect have been worth if you valued it
21 with both the highest and lowest multiples in your previous
22 statement?

23 A. Well, to give you an idea of sort of the range of what
24 we're talking about here, and given the 903 in the middle,
25 the range would be, if you took the lowest multiple, which

1 was 9.2, and you compared that you get 714 million. If you
2 took the highest multiple which is 16.3, you would be all
3 the way up to 1.2 billion. So 903 is the median, kind of
4 like the one in the middle.

5 Q. That gives you yet another value for WordPerfect that
6 you can use as a check against --

7 A. Yes.

8 Q. -- your overpayment and value calculation?

9 A. Right. It is essentially similar to the process that
10 Morgan Stanley would have gone through.

11 Q. Did you do anything else to compare WordPerfect to
12 other companies to corroborate its value in a similar way?

13 A. Yes. The next is you can look -- it is a little bit
14 closer to the housing sales, when we looked at what houses
15 sold for in your neighborhood, and we can try to have a
16 group of companies that were actually sold during this time
17 period.

18 So I have picked five companies here that all sold over
19 \$150 million, and they are roughly in the same SIC codes and
20 the same business. I have looked at what the ratio was
21 between what they sold for and what their earnings were, so
22 I get another ratio of value to earnings, and in this case
23 it is the transactions value, the value when the company was
24 purchased.

25 So Aldus was purchased by Adobe and the purchase price

1 which was 13.3 times Aldus' earnings.

2 Q. So these are value earnings and multiples that you have
3 multiplied by the sales of WordPerfect, again, to get the
4 value for WordPerfect?

5 A. Well, you multiply it times the EBIDA again and we
6 multiply it times the earnings. So what I have just done is
7 instead of just looking at comparable companies and their
8 valuation in the stock market, I have looked at the
9 transactions value. When I do the transactions value you
10 can see what I get is a somewhat higher number because, of
11 course, my multiple is higher on the transactions than it is
12 on the straight valuations by looking at their stock price.

13 And so not surprisingly what I am getting now, if I use
14 the median value of 1.4, and if I look at the whole range it
15 is somewhere between one and one and a half. These are all
16 just different ways of looking at the same --

17 Q. Is one more relevant than the other?

18 A. Well, you know, I think that this was the transaction,
19 and it had -- you know, so you're actually buying
20 WordPerfect, so in that sense it is more like a transaction
21 than it is the value of a company.

22 On the other hand, the sample that I was able to come
23 up with for transactions were firms that had at least \$150
24 million in terms of transactions. WordPerfect is
25 significantly larger than that, and so that might have

1 effected the result as well.

2 You know, when I looked at this I basically say I have
3 got two measures, they each have their pluses and minuses,
4 and, you know, when in doubt I am going to be somewhere in
5 between.

6 Q. Did you do any other analyses of comparable
7 transactions or companies to get additional values to check
8 your original valuation of the overpayment?

9 A. Yes. There is a lot of different multiples that people
10 can use here. We have just been talking about a particular
11 multiple which is EBIDA, earnings before interest, taxes,
12 depreciation and allowances, but people also come up with
13 valuations which are based on a different measure of
14 earnings, which is something called EBIT, which is just
15 earnings before interest and taxes.

16 So now I am going through it in great detail. I took
17 the same median eight companies and the same five
18 transactions, and instead of coming up with a multiple of
19 EBIDA and then multiplying it times WordPerfect's EBIDA, I
20 came up with a multiple of EBIT and multiplied it times
21 WordPerfect's EBIT, and, as you can see, if you use EBIT
22 instead of EBIDA you come up with a slightly smaller number.
23 674 million if I use comparables, and if I stick with the
24 actual sales of companies I am up to about 1 billion. Okay.

25 And then, finally, if you can't get earnings, which is

1 usually I think most of us agree is the best way to base
2 that on, if there are no earnings, and that is often the
3 case in software, they have negative earnings and all you
4 can look at is sales, and so what you can now do is you can
5 look at a multiple of sales as your comparison. You can
6 sort of say what is the ratio of the amount that the company
7 was sold for relative to its sales?

8 If I take a look at our median 11 companies, and I look
9 at the ratio of their stock market value, market value to
10 sales, it is about 2.7. Okay. They are selling at about
11 2.7 times sales, even though they are selling at 11 times
12 earnings, and so if I then use WordPerfect sales at 674
13 million, what I get is, depending on whether I use
14 transactions or whether I use the existing company, if I use
15 the value to sales ratio then I get an even larger number.

16 So basically, you know, my EBIDA number is going to be
17 in between my EBIT number and my sales ratio number. These
18 are just a lot of numbers, and I am looking frankly for some
19 kind of central tendency.

20 Q. And is the whole notion here that you're trying to look
21 for a way to give yourself confidence that what Novell paid
22 for WordPerfect, after you took out the overpayment, is
23 consistent with the value that other investors would have
24 placed on these assets?

25 A. Yes. I am really trying to get as many different, you

1 know, possible ways of going at this as possible to see if
2 the number that I'm coming up with, if it seems to be close
3 to the number that I originally estimated.

4 Q. Did you prepare a demonstrative for the jury that
5 compares your values to Dr. Hubbard's valuation and to these
6 other corroborative valuations to help everybody sort of see
7 this other than in a numerical form?

8 A. Yes.

9 Q. Tell us what this is.

10 A. This is what we have seen already. Okay. So this is
11 just a review of the bidding again. We're going to start
12 off with my estimate that I came up with out of the lengthy
13 financial market events study. I came up with this, as you
14 will recall, by estimating the overpayments and then
15 subtracting it off, and the estimate is 1.134 billion.

16 Now, one thing just to -- as I said before, we have to
17 do to apples and oranges, but what this chart is going to
18 look at is it is going to look at WordPerfect and QuatroPro.
19 Okay. Those two. So I have added that in when necessary.

20 Just to kind of quickly review this, and you have seen
21 all this before, what we have is the 1.134 billion from my
22 stock market analysis, and that is my primary methodology,
23 and we have the actual purchase price, the number by now we
24 have all memorized, 1.555 billion, which is what they
25 actually paid for it, and the difference between these two,

1 of course, is my overpayment. Okay.

2 Then we have the highest number, which is Mr.
3 Peterson's estimate back in '94 that he thought the company
4 was worth \$2 billion. It is higher than two billion because
5 I have added the value of QuatroPro and GroupWise, because
6 at the time that he was valuing it it didn't have QuatroPro
7 and it didn't have GroupWise.

8 Then we go to Mr. Peterson's other estimate and I have
9 done the same sort of thing. This is his one percent sale
10 and that gets you to 857. The next one is the Morgan
11 Stanley estimate, and that comes out of the initial public
12 offering in 1993 and that is 1.4442 billion.

13 The next is one of my favorites, which is the Lotus
14 bid. Again, they bid 1.3 for WordPerfect, but now I'm going
15 to add back QuatroPro. I am trying to keep it all oranges
16 as possible, and then we come to my attempt to do what
17 Morgan Stanley did by looking at multiples of various
18 earnings or sales, and there is the multiple of EBIDA at
19 1.05 billion, and there is the comparable transactions with
20 EBIDA, which gets you to 1.59 billion.

21 Then I looked at EBIT instead EBIDA, and remember we
22 came up with those two valuations, the 800 and the 1.2
23 billion. And then what we did is we looked at the sales
24 ration, and that generated the highest ones, and we looked
25 at the value of the sale comparables, and that gets you

1 somewhere between 2 billion and 1.7 billion.

2 So, you know, what I am trying to do is I have tried to
3 look at this thing in as many possible ways as possible, and
4 all the different estimates that are out there, and what I'm
5 really saying is if I look at my estimate of 1.13 billion,
6 you kind of like to look across -- you know, some are higher
7 and some are lower, but it is in the ballpark. If I look at
8 what Dr. Hubbard's estimate is going to be, which is 207
9 million, it really is way out of line with these other
10 valuations.

11 Q. Is that a confidence building factor for you in terms
12 of determining whether your analysis of overpayment and
13 value was a correct approach?

14 A. Yes, it gives me as an economist considerable, you
15 know, confidence in my result.

16 Q. Now, we have done valuation and we have done the
17 overpayment and now the valuation which confirms it.

18 You talked a little bit earlier about how you also had
19 to value GroupWise.

20 A. Yes.

21 Q. You have to take account of the GroupWise assets in
22 1996 for purposes of backing them out of the sale to Corel;
23 isn't that correct?

24 A. That is correct. We are back to our first adjustment,
25 which is the GroupWise adjustment, you know, back to our

1 second lot problem and we have to take that up.

2 Q. You used the land analogy to the second lot to compare?

3 A. That is right. As you'll recall, we have to take
4 GroupWise out because GroupWise is like my second lot, and I
5 placed a valuation on GroupWise of 117 million.

6 Q. So tell us quickly, if you can, how you went about
7 calculating the value of GroupWise?

8 A. Well, I had the same problem. I don't have a publicly
9 traded company so I have to do, you know, my comparables or
10 walk around the neighborhood sort of solution. And so I
11 looked at three possible ways to value GroupWise and came up
12 with a range, and I picked the largest number as I have
13 said.

14 The first really is the simplist. It basically says
15 that Novell, when Novell made that offer for WordPerfect
16 what was the offer relative to the sales? It was offering
17 to pay 1.44 billion for WordPerfect. WordPerfect's sales
18 were 707 million, so that gives me a valuation based on
19 sales that they were paying about two times sales.

20 If I multiply that times GroupWise's actual revenues
21 and in 1993, you know, I get a number of \$52 million. Now,
22 some of you may remember Mr. Peterson's testimony when he
23 also talked about --

24 Q. Mr. Frankenberg.

25 A. Yes, Mr. Frankenberg.

1 Mr. Frankenberg said in testimony when he was asked
2 about the valuation of GroupWise he said, well, you know,
3 GroupWise at the time was about four percent of the sales of
4 WordPerfect, and so one thing you could do is you could just
5 take four percent of the value of WordPerfect, of the 1440,
6 and that is exactly the same methodology. So if you do that
7 and just say, well, I am going to take four percent of the
8 sales of WordPerfect you also get to \$52 million.

9 But, you know, I am searching for other ways to value
10 it, and as you may have heard in 1994, and I'm not sure
11 whether you have, but WordPerfect acquired a company called
12 Soft Solutions.

13 THE COURT: I think this is knew, isn't it? You
14 can get into it, I was just curious --

15 MR. TASKIER: I believe Mr. Harral mentioned that
16 it was acquired at the time, Your Honor.

17 THE WITNESS: Well, Soft Solutions was a small
18 company, and what WordPerfect wanted to do was to put it
19 together in its GroupWise, and so it is very, very similar
20 to GroupWise and became part of GroupWise. So it seemed
21 like a natural thing to pick. They paid \$17.5 million for
22 it. Its sales -- its sales were 10.29, so they were paying
23 a multiple on Soft Solutions of 1.7.

24 So if we apply that same multiple to the rest of
25 GroupWise, okay, GroupWise as a whole had revenues of 41.5

1 million in '94, and if we multiply that by 1.7, now we wind
2 up with a valuation of 70 million.

3 And then, finally, again, in the attempt to create
4 a range here, what I did is I looked at Lotus, a very
5 successful company, and I looked at the market value of
6 Lotus relative to its sales, and that is about 2.82. That
7 is the highest valuation. If I multiply that times
8 GroupWise's revenue or 41 million, that is when I wound up
9 to 117 million. So, you know, these valuations get you
10 anywhere from 52 million to 117 million.

11 Q. Now, in your initial report in this case, your initial
12 expert report, you came up with a different value for
13 GroupWise; isn't that correct?

14 A. That is correct.

15 Q. Can you explain why you have that?

16 A. Well, when I read Mr. Frankenberg's deposition he
17 talked about -- he went back and forth on what GroupWise
18 might be worth, and in all honesty it was not a very clear
19 discussion, but I tried to interpret that and see if I could
20 figure out from that what Mr. Frankenberg thought GroupWise
21 was worth in 1994. And I came up with a valuation I think
22 of about 200 million or something like this.

23 Since then Mr. Frankenberg has testified, and I have
24 read that part of the testimony, and I think it is clear
25 that he was not talking about what I thought he was talking

1 about. He was talking about some kind of a strategic
2 forward looking valuation for GroupWise in 1996, and what I
3 am interested in is, you know, what was it worth in 1994 as
4 a real asset.

5 And so in the end I decided to go with the highest
6 number that I could get out of my comparables which was 117.

7 Q. So you have chosen the 117, the highest number?

8 A. Yes.

9 Q. Why did you choose the highest number?

10 A. Well, it is because in an attempt to be conservative,
11 and if I have a range I want to pick the highest number, it
12 is going to generate the lowest damages. And also I think
13 that this is very, very close to what Dr. Hubbard came up
14 with as well, although through a completely different
15 process.

16 Q. So this is not really in contention with what Dr.
17 Hubbard came up with?

18 A. Excuse me?

19 Q. What number did Dr. Hubbard come up with?

20 A. I think Dr. Hubbard was like 113 or something like
21 that. It is very close.

22 Q. Not significant?

23 A. As I said before, this does not seem to be an area of
24 much disagreement.

25 Q. So how are we doing here?

1 A. We are doing pretty well. We have got two done, and I
2 guess we just have the third to go, and we have only one
3 more adjustment to go.

4 Q. What is your last adjustment?

5 A. All right. So we have done GroupWise, we have done the
6 value of the overpayment, and all we have is the apps
7 appreciation.

8 Q. Why would the applications have appreciated over a
9 period of time?

10 A. Well, this was during a period when business was
11 growing. I think if you look at the slide you can see this
12 is going back to your earlier thing, and if you look at the
13 productivity applications revenue -- you know, which was
14 doing very well and which was growing very nicely, and you
15 would expect somebody in this business, absent bad acts or
16 things like that, to continue to appreciate over this
17 period.

18 Q. What benchmark do you use when you try and figure out
19 what the increase in value of WordPerfect and QuatroPro
20 would have been absent the bad acts of Microsoft?

21 A. Well, probably the simplest benchmark to use would be
22 what happens to all companies, if you wanted a broad index,
23 and you would simply adjust it by what happened to the S&P
24 500 over this time period. If you wanted to narrow it down
25 a little bit and say I am interested in what happened to

1 technology stocks over this time period, you could take
2 something like the NASDAQ, which is more technology heavy,
3 and look at that index. Both of those indexes I recall went
4 up by something like 20 percent over this two year period.

5 What I did is I asked myself what is the lowest
6 reasonable interest rate or rate of appreciation that we can
7 be talking about here, and so what I used is the interest
8 rate on T bills, which is government bonds, and that is
9 basically the safest form of investment. At the time I
10 think it was about five percent a year.

11 And if you wanted to think of analogies, it would be if
12 Novell took its money and instead of investing it in the
13 NASDAQ or the S&P 500, if they invested it in T bills how
14 much would they have had by the end of the period? This is
15 basically my attempt to come up with some level of
16 appreciation between the two years.

17 Q. And Dr. Hubbard also allowed for appreciation?

18 A. Yes, he did. And we used -- I think he also used the T
19 bill rate. As I say, it generates the most conservative
20 estimate and generates the lowest number of damages.

21 Q. Just so your opinion is clear, what is your final
22 damage figure as a result of this analysis?

23 A. Well, we come down to the end here, and I wind up
24 having gone through this admittedly rather lengthy process
25 with a damage figure of 976 million out of my purchase

1 versus sales using the financial market methodology. I
2 would say that is my primary methodology.

3 Q. So you also on your hardboard chart over there where it
4 says purchase versus sale, Lotus conditional bid, you have a
5 different figure; is that correct?

6 A. Yes.

7 Q. Now, what you have done for the 976 million is a fairly
8 long and sort of complicated story about overpayment and
9 financial market valuations. Is there a way to arrive at an
10 estimate using another valuation without having to go
11 through what happened or didn't happen in the stock market?

12 A. Yes. There is a much shorter way to get there, and it
13 is basically to say that instead of looking at all of this
14 stuff we have looked at before, suppose that we just look at
15 Lotus's bid. And suppose we say, well, you know, Lotus bid
16 is less than what Novell paid for it, but if we can accept
17 the idea that it is sort of unlikely that that bid from
18 Lotus would involve any overpayments, what we can do is we
19 can use Lotus's bid and then we don't have to worry about
20 the overpayment issue.

21 So that is basically -- we still have to make our same
22 adjustments, but this is really very quick. What we do now
23 is we take the WordPerfect purchase of 1,300, I mean, that
24 is the Lotus bid, okay, and I have to add on QuatroPro
25 because they were only bidding on WordPerfect, so what I get

1 is an estimate of what the assets were worth in 1994 using
2 Lotus as my proxy for WordPerfect, and that is 1.455.

3 Then I do exactly the same story. We kept GroupWise,
4 and I have to subtract out that 117, and we don't have an
5 overpayment anymore because we are using Lotus instead of an
6 overpayment. I have some apps appreciation here, and it is
7 a little bit higher, ten percent of the bigger number, and
8 by the time I go through and I subtract my 146, now I have
9 another estimate of damages.

10 It is a much shortened version, and relying on the idea
11 that Lotus's bid was a reasonable estimate of the value of
12 WordPerfect. That gets me to a damage number of about 1.329
13 billion. That is significantly higher than the 976, and
14 that is what makes me a little more comfortable with my 976.

15 Q. Just to be clear, there are three areas where you made
16 adjustments, GroupWise, overpayment and applications
17 appreciation, the interest rate; is that correct?

18 A. Right.

19 Q. And overpayment is where you have your biggest
20 disagreement with Dr. Hubbard?

21 A. That is correct.

22 Q. So this particular analysis strips that out?

23 A. Yes, it does. It replaces the inquiry with respect to
24 overpayment with basically the question of does one believe
25 that the \$1.3 billion that Lotus offered, was that a

1 reasonable market estimate of what those assets would be
2 worth.

3 Q. And there is no significant disagreement with respect
4 to GroupWise, being that you're just three or \$4 million
5 apart on that, right?

6 A. That is correct.

7 Q. And there is no significant disagreement on
8 appreciation, because you're using the exact same interest
9 rate?

10 A. Exactly.

11 Q. Thank you.

12 Back when we started this morning you said that
13 Microsoft's anticompetitive conduct harmed Novell in two
14 different ways.

15 A. Yes.

16 Q. And those are the two different ways that are on the
17 screen?

18 A. Yes.

19 Q. Now, in principle can an argument be made that
20 Microsoft's anticompetitive conduct was not the only reason
21 why the value of the assets that Novell acquired in March of
22 1994 could have fallen by January of 1996?

23 A. Yes.

24 Q. In other words, that there is there some other reason
25 or other reasons apart from, in principle, apart from the

1 bad acts and the anticompetitive action, pulling the
2 namespace extensions?

3 A. Yes, there are, and Microsoft and its experts have
4 mentioned several of them, and so I have done my best here
5 to list what I think are the arguments that have been made
6 and are likely to be made as to why maybe this wasn't
7 Microsoft's fault, maybe something else had caused this fall
8 or can explain --

9 Q. Before we go through each one and your analysis on each
10 one, can you give us your opinion as to how you analyzed it,
11 and your opinions as to whether any of these are credible
12 explanations for the declines in the value of the business
13 applications?

14 A. Well, the answer is no. I don't think any of these
15 provide a credible explanation, and I am going to go through
16 and explain why.

17 Q. Now, are you testify as an industry expert?

18 A. No, I am not testifying as an industry expert or as a
19 technology expert. I think you asked both of those before.

20 Q. You're just testifying in the context of causation and
21 as an economist?

22 A. Yes.

23 Q. Let's start with the first one. It says WordPerfect's
24 migration from DOS to Windows.

25 What is that allegation?

1 A. Well, to the best of my understanding it is the
2 argument that says that WordPerfect was late in migrating
3 from DOS to Windows, and with that particular history the
4 market might have looked at that and said, well, given its
5 history of being late in migration or difficulties in
6 migrating from one operating system platform to another
7 operating system platform, maybe the market might think that
8 that is likely to be repeated in the future. And so in that
9 sense we should have expected that WordPerfect and Novell
10 would not have done well when Windows 95 came along, because
11 they didn't supposedly do all that well when Windows came
12 along. They were slow in the migration process.

13 Q. Did you do an analysis of the revenues of WordPerfect's
14 word processor during this period of time?

15 A. Yes. I think my response to this is going to be pretty
16 clear when you look at the numbers. This is WordPerfect's
17 word processor revenues on DOS. As you can see, and I don't
18 think anybody disputes this, WordPerfect did very well on
19 DOS.

20 Indeed, in 1990 and 1991 they were selling more than
21 \$350 million a year of word processors for DOS. In that
22 particular time period that is a very substantial number.

23 The next transition comes to Windows 3, and if you now
24 look at what WordPerfect sold on the Windows 3X platform,
25 which was 3.0, what you see is that blue line, and what you

1 see is essentially up until the point where 1995 comes along
2 that they are doing quite well on the Windows platform.

3 So, you know, I think that if you look at somebody who
4 was doing yellow and then was coming along like this on the
5 blue, I don't really see any indication that Novell was
6 having much of a transition problem from DOS to Windows.
7 They were late coming out on Windows, but when they did they
8 did quite well.

9 Q. And did you further examine what happened after Windows
10 95 came out?

11 A. That is right. Here is where the difference comes,
12 which is Windows 95 comes out and now we're talking about
13 the revenue on Perfect Office for Windows 95. And what you
14 could see is now simply a dramatic difference. Okay.

15 In other words, this falls way off. The red bars fall
16 way off. I don't think anybody looking at these two would
17 say, oh, I am going to expect this to happen. So the past
18 history of looking at Windows and the experience between
19 these two platforms I don't think would leave anybody to
20 expect to see this. Okay.

21 MR. JARDINE: Your Honor, may we approach the
22 bench?

23 THE COURT: Yes.

24 (WHEREUPON, a bench conference was begun.)

25 MR. JARDINE: I have two issues I want to raise.

1 Number one, he has testified he is not a market
2 expert, and he is now testifying about what was happening in
3 the market, so I would like to move to strike that. The
4 next thing on his chart, if you go back, is a reference to
5 DR DOS, and in his report he refers to the settlement
6 amount --

7 MR. TASKIER: He will not -- I have no intentions
8 of eliciting the settlement amount.

9 MR. JARDINE: But if he says it --

10 THE COURT: I think he is close to a marketing
11 expert, too, but I will overrule it and emphasize that he is
12 only testifying as an economist and not as a market expert
13 and the settlement issue is not an issue.

14 MR. TASKIER: Judge, just to be clear, I asked him
15 if he was an industry expert he said that he wasn't, he was
16 looking at it as --

17 THE COURT: I know. I understand that. I'm just
18 going to say it myself.

19 MR. JARDINE: Okay. You can say you're not, but
20 then when you're testifying --

21 MR. TASKIER: I will make it clear at this moment,
22 just so that you understand and so we don't have any
23 blow-ups, he will testify about the reasons why -- Dr.
24 Hubbard attacks Novell for not being able to process or for
25 failing at managing the DR DOS business.

1 MR. JARDINE: His report says that. Whether he
2 says that here is another matter.

3 MR. TASKIER: His report says that. I have to be
4 prepared with my expert. That is what he is going to say.
5 My expert will rebut that by referring to the fact that it
6 was not because of competitive reasons, but because
7 Microsoft was anticompetitive and driving DR DOS out of
8 business.

9 MR. JARDINE: Well, I will represent to you, Your
10 Honor, that that is poisonous testimony if he gets into the
11 settlement and other things, and we will not have Dr.
12 Hubbard testify about that.

13 MR. TASKIER: Well, you won't have Dr. Hubbard
14 testify about --

15 MR. JARDINE: About the mismanagement of those
16 specific assets.

17 MR. TASKIER: All right. Then I will try not to
18 elicit --

19 THE COURT: If something happens with Dr. Hubbard
20 you can in rebuttal --

21 MR. TASKIER: I wanted to raise it.

22 THE COURT: Thank you.

23 (WHEREUPON, the bench conference was concluded.)

24 THE COURT: We have clarified a couple of issues
25 and it was helpful, and the doctor when he testifies is not

1 testifying as an industry expert, and let me just reiterate
2 that he is testifying as an economist and not as a marketing
3 expert or anything of that nature, he is testifying as an
4 economist.

5 BY MR. TASKIER

6 Q. Let's talk about an economics question. Say that had
7 the market believed that WordPerfect was unable to
8 successfully transition to Windows 95 back in early '94,
9 would that have effected the damages in this case?

10 A. No, it wouldn't effect the damages, and the reason is
11 because you have to think who it would have effected. Let's
12 suppose that WordPerfect came into this with any kind of
13 history, like a history of having problems in transitioning
14 to a new system. And let's suppose that people thought that
15 that problem was going to stay on, that Novell wasn't going
16 to be able to fix it. Okay.

17 So I have some real problem with WordPerfect, and I
18 think that that is going to be projectable into the future
19 and so it is going to create real problems into the future
20 for anybody. Well, what is going to happen then, is that
21 when WordPerfect comes to sell itself, you know, that
22 characteristic is known, this history is known. People must
23 have, for whatever it is worth, looked at this and said do I
24 think that there is likely to be any problem in the future
25 with a transition because of the very nature of WordPerfect?

1 And if there is, then what happens is WordPerfect is
2 not going to be able to get as high a price for itself as it
3 otherwise could, because as long as people know about this
4 and expect it to happen, what would happen is that if people
5 had known or believed that this red outcome was inevitably
6 because of past experience, the price of WordPerfect would
7 have been much, much lower and Novell would have paid much
8 less.

9 If this hypothesis was true and there really was this
10 problem, the person that is harmed by this is the original
11 owners of WordPerfect. When they came to sale their assets,
12 there house is damaged, okay, and everybody knew it was
13 damaged. So even if this is correct as a factual matter
14 and, as I say, I am not a marketing expert, as an economics
15 matter, you know, it is the kind of an argument that belongs
16 in a damage calculation.

17 Q. So let's turn to the second set of reasons that were
18 advanced as to why there was a loss of sales and value under
19 Novell's ownership. Novell's management of prior
20 acquisitions in DR DOS and Unix Systems Laboratories.

21 Why don't you just quickly here mention that, Dr.
22 Warren-Boulton. Although it is mentioned, DR DOS is
23 mentioned in Dr. Hubbard's report, I am given to understand
24 that that will not be an argument that is presented to the
25 jury, so we don't have to address that here. You should

1 limit your comments to the Unix Systems Laboratories
2 allegations.

3 What do you understand about Dr. Hubbard's allegations
4 with respect to the Unix Systems Laboratories?

5 A. Well --

6 MR. JARDINE: Your Honor, I just want to make sure
7 that we have a continuing objection that he is testifying
8 outside of the scope of his expertise.

9 THE COURT: Of course you do.

10 MR. JARDINE: Thank you.

11 THE COURT: And what I said before is true.
12 Obviously he is testifying as an economist and nothing more
13 or nothing less.

14 BY MR. TASKIER

15 Q. What was this second acquisition that you considered?

16 A. Well, the second issue that was raised was Novell's
17 acquisition of Unix Systems Laboratories and how well that
18 was managed, and the allegation is that would make the
19 market believe that Novell just wasn't very good at managing
20 acquisitions. And if it wasn't very good at managing Unix
21 Systems, then the implication would be that people would
22 think that when they came to buy WordPerfect that they would
23 manage WordPerfect badly as well, and that would be one of
24 the reasons why analysts or others would think that the
25 price that they were paying for WordPerfect was too high.

1 Q. Did you do any analysis to determine whether the market
2 thought that if Novell had done a bad job managing Unix,
3 that that would imply poor management of WordPerfect as
4 sell?

5 A. I did a pretty simply check. I asked my staff to do a
6 search through all of the news articles around the time that
7 Novell purchased WordPerfect. You know, search for the word
8 Unix and combined with everything else and see if we could
9 find any mention of anybody at that time who sort of even
10 raised this argument that the experience with Unix meant
11 that the acquisition by Novell was a bad idea, because
12 Novell was going to manage this badly. And we could find
13 nothing at all.

14 So I think this was, as best I can see, this is an
15 argument that simply wasn't salient at the time at all.

16 Q. Let's talk about the third of these potential
17 explanations, that WordPerfect was allegedly linked to
18 suites.

19 Can you explain your understanding of the allegation?

20 A. Well, I think the allegation is that as compared
21 particularly with both Lotus and with Microsoft, WordPerfect
22 came to the suite world third. It was later than the others
23 in developing a really good suite. I think there is also an
24 argument here that the suite that WordPerfect came up with,
25 particularly with QuattroPro, might not have been as good as

1 the other suites. There are really two arguments here, a
2 late suite argument and that the suite maybe was not all
3 that good argument. And so the question is does this
4 history of being late, again, this history story,
5 WordPerfect was late to suite and does that mean that Novell
6 will be late to suites? And that Novell would also not be
7 able to introduce suites rapidly or introduce good suites
8 if, hypothetically, WordPerfect had been unable to do that.

9 Q. So what conclusion did you reach regarding the argument
10 that WordPerfect missed the transition to suites?

11 A. Well, to begin with, WordPerfect was the third to come
12 out. The suite that they did come up with was the one with
13 Borland Office, and it was not as well received. The
14 argument was that it was not really well integrated.

15 But if we look at what actually happened when Novell
16 came out with this suite, which was Perfect Office 3.0,
17 there are a couple things. One is my view is that Perfect
18 Office 3.0 was very well received. It got very good
19 reviews. And one of the things that was true about the
20 Perfect Office suite, and I know it wasn't very well
21 integrated, and in fact if you go back and you look at some
22 of the reports of the discussion at the time of the
23 acquisition as to what were the strategic gains from being
24 able to have this merger between Novell and WordPerfect and
25 QuatroPro, one of the things that gets mentioned is that by

1 bringing together QuatroPro and WordPerfect under the same
2 roof, the umbrella is trying to integrate two separately
3 owned applications.

4 Well, this is going to make it much, much easier and
5 more direct for Novell to succeed in integrating these
6 applications, in coming up with a really good suite, better
7 than they otherwise would have done.

8 Q. Did you look at the evidence to assess Novell's
9 opportunity to make the transition to suites?

10 Did you prepare a slide for the jury?

11 A. Sure. I think this is really -- I don't want to repeat
12 too much, but I think that Mr. Frankenberg has covered most
13 of this. You know, Mr. Frankenberg really did not believe
14 that Novell had missed the train or had missed the boat or
15 whatever it was in getting into suites.

16 What he pointed to is that in 1994 WordPerfect's user
17 base was actually larger over all of 1994 than Word's. The
18 user base, remember, is that real opportunity set that you
19 have of your devoted fans or the people who are using your
20 word processor, and those are the people who are most likely
21 to switch to your suites, okay, because they like your word
22 processor.

23 And so in 1994, you know, the train had not left. In
24 fact, I think he said -- here it is. 74 percent of the
25 potential customers had not decided on a suite. So, you

1 know, the game was still up. He made the point that in 1994
2 was the first year that suite application sales actually
3 exceeded standalones. I think the point to remember about
4 that is that the install base lags well behind sales.

5 So, you know, you have this large install base of
6 people who are using standalone applications, say for word
7 processing, and then people start buying suites, and even
8 when people are buying more suites than standalone
9 applications, because they only transition slowly, that
10 install base of people with standalone applications is still
11 there. So even when suite sales are higher than standalone
12 sales, install base of standalones sales, which really is
13 your opportunity, is greater than the install base of people
14 who have already committed to a suite.

15 Again, the idea here is get them to transfer to your
16 suite before they transfer to somebody else's suite, and
17 that opportunity I think was really there. That is
18 certainly what Mr. Frankenberg, whose testimony I was
19 relying on, believed at the time.

20 As a final point, and as I mentioned and I think you
21 mentioned as well, Perfect Office 3.0 was very well received
22 and was highly regarded. So whatever the concern was, it
23 turned out that it wasn't a concern.

24 MR. JARDINE: Your Honor, if I may be heard, the
25 length of the answers makes it difficult to object, but I

1 think most of that testimony got into marketing expertise
2 and --

3 THE COURT: I think basically what it got into is
4 what Mr. Frankenberg testified to, but I think the jury
5 remembers what he testified to and it probably is harmless.
6 I understand your position, but it is overruled.

7 Really what you were saying is what you had read
8 Mr. Frankenberg to say.

9 THE WITNESS: Exactly. If Dr. Frankenberg said
10 something and I said something else --

11 THE COURT: That is fine. In a trial of this
12 length it is not a problem.

13 Go ahead.

14 BY MR. TASKIER

15 Q. Just to ask in conclusion, your opinion on the
16 allegation that WordPerfect's loss of sales and value under
17 Novell's ownership being effected because WordPerfect was
18 allegedly to --

19 THE COURT: I am going to sustain the anticipated
20 objection to that question on the grounds that it may be
21 more marketing than as an economist. I really think that
22 the jury can evaluate Mr. Frankenberg.

23 MR. TASKIER: I think he has answered that, Your
24 Honor. Thank you.

25 BY MR. TASKIER

1 Q. Let's talk about the fourth of the potential
2 explanations where it says late to Windows 95 because
3 focused on other projects.

4 Did you prepare a slide to discuss this?

5 A. Yes, I did.

6 Q. Can you explain your analysis here.

7 A. Well, there could be two kinds of arguments that are
8 made here. One possibility is that one might say, well,
9 maybe Novell was just less willing to spend money on R and D
10 and development than WordPerfect was. They cut back on
11 their R and D and development expenditures.

12 That really is not the case. If you look at the data
13 on the percent of revenues spent on research and development
14 by Novell and compare it with WordPerfect, they are pretty
15 much straight in line. So I don't think there is going to
16 be any concern here about the idea that Novell was less R
17 and D intensive or unwilling to spend the money.

18 I think if it is a concern here, apparently it is a
19 question of did they spend the money on the 16 bit 3.0, for
20 Windows 3.0, and did they not spend enough money on the
21 Windows 95 product? You know, if that were true, could that
22 partially explain some of the delay in coming out with
23 Windows 95.

24 Now, here, essentially, and I am not a marketing
25 person, and I am also even less, you know, a technology

1 person and so, you know, I am essentially relying on the
2 testimony of Mr. Gibb and Mr. Harral and Mr. Richardson who
3 testified in front of you extensively. It is my reading of
4 that testimony that --

5 THE COURT: Let's move on to something else.

6 MR. TASKIER: Thank you.

7 THE COURT: I think the jury can see it again, and
8 it can remind people of what they testified to, but your
9 reading the testimony probably isn't -- we should go on to
10 something else.

11 THE WITNESS: I prefer to leave it that way
12 anyway.

13 MR. TASKIER: I am not --

14 THE COURT: No, you're doing a good job.

15 BY MR. TASKIER

16 Q. Let's talk about this final potential explanation that
17 was asserted by Microsoft which is sales force
18 reorganization. Does that refer to layoffs that the jury
19 has heard about in 1994 as part of Mr. Frankenberg's
20 testimony?

21 A. Yes. Mr. Frankenberg testified about the lay off of
22 the sales force.

23 Q. As an economist can you tell us, analyzing industrial
24 organizations, whether you believe that there is some
25 validity in the allegation that has been asserted by

1 Microsoft?

2 A. I think I will try to differentiate myself from Mr.
3 Frankenberg. I don't know if I will do a perfect job. A
4 couple of things.

5 First of all, when you look back at what the market
6 thought this merger was all about, it is clear that the
7 financial markets and the analysts thought that
8 WordPerfect's sales strategy was just far too expensive.
9 They essentially had a very extensive sales force that -- I
10 guess it sold at retail. When you look at the data on the
11 costs, you know, what you see is, you know, significant
12 increases in the costs of selling, and this really ate into
13 the bottom line for WordPerfect.

14 One of the attractions that people mentioned at the
15 time of the merger was that this particular acquisition by
16 acquiring -- specifically by merging with Novell, Novell had
17 a very good sales force, albeit in a somewhat different
18 direction. They had what you might call a dealer network.
19 The dealer network is a much, much less expensive way to
20 sell than through this, you know, going all the way straight
21 through to the customers.

22 The belief was that one of the real opportunities out
23 of this merger was to take WordPerfect's selling direct
24 process and basically piggyback it onto this very extensive
25 set of I think about 20,000 dealers that Novell had.

1 This was --

2 MR. JARDINE: Your Honor, if I may interrupt, I
3 think he is testifying as to what the belief of Novell's
4 management was and is far afield and is not economic expert
5 testimony.

6 MR. TASKIER: With respect, Your Honor, I think he
7 is testifying as an expert in industrial organization.

8 THE COURT: I think, among other things, he is
9 testifying that this very reorganization was anticipated at
10 the time of the purchase and then analyzed it as an
11 economist.

12 I am going to allow him to continue.

13 MR. TASKIER: Thank you, Your Honor.

14 THE WITNESS: This was really identified as one of
15 the opportunities to come out of this. That is sort of my
16 first point.

17 Second, as I understand the timing here, the
18 layoffs occurred almost immediately after the merger was
19 finalized, and so we're talking about an early period when
20 the product that Novell had out there was Perfect Office
21 3.0. So, you know, if the sales force reduction did have an
22 effect on revenue, you would expect it to have a revenue
23 effect on Perfect Office 3.0, and Perfect Office 3.0 did
24 very well. So we are not talking about what the sales force
25 would have looked like by the time the Windows 95 product

1 had come along.

2 THE COURT: I am going to strike that. I don't
3 think that is really in his area of expertise. I just don't
4 see how an economist -- an economist can opine on
5 everything, but I am just not comfortable with that
6 testimony.

7 MR. TASKIER: I think he is talking, Your Honor,
8 about the economic effects of what happened with the sales
9 in Windows 95. If the argument is that the reduction in the
10 sales that would have been excepted in the sale of Windows
11 95, he is testifying as an economist that the layoffs that
12 occurred much earlier would have only effected the sales
13 earlier and would not have effected Windows 95. I am not
14 sure that came out clear, Your Honor, but I think that is
15 quintessentially economic testimony.

16 MR. JARDINE: Your Honor, on that point, the
17 problem is he is now testifying to facts not in evidence, in
18 addition to the scope. I just think that is --

19 THE COURT: I understand the position. I think
20 the best thing is to leave this to argument based upon the
21 existing evidence.

22 MR. TASKIER: I am sorry, Your Honor?

23 THE COURT: I think the best thing to do is to
24 leave this to argument of counsel and the existing evidence.

25 MR. TASKIER: Thank you.

1 BY MR. TASKIER

2 Q. Did you do a financial market analysis that would add
3 to your understanding as to what happened here?

4 A. Well, this is something I think I probably can say,
5 which is, again, I looked at what the financial markets
6 about this, and I did look at what happened when Novell
7 announced that it was laying off all its sales force and its
8 share price actually rose a little bit. I don't see -- when
9 I look at it I don't see any evidence that the financial
10 markets thought that this was a really bad idea. I can
11 say --

12 THE COURT: That is perfectly appropriate
13 testimony. There is no objection and it is appropriate.

14 MR. TASKIER: Thank you, Your Honor.

15 BY MR. TASKIER

16 Q. Your ultimate conclusion, and I think you stated it
17 earlier with respect to these five arguments, was what?

18 A. It is that I don't see these as explanations for signs
19 of an effect that we saw. I don't see it basically as a
20 rival to the alternative explanation, which is the one that
21 the three developers basically offered, which is the pulling
22 of the namespace extensions and the delaying of the release
23 of Windows 59.

24 I mean, that seems to be a direct, straightforward,
25 clear, large effect, and none of those, when I look at any

1 of these, do I really get any feel that any of them are
2 significant or even there.

3 Q. All right. So we have now gone through your first
4 damages approach, we have unpacked that and we have analyzed
5 overpayment, and we have gone around valuation and we
6 analyzed alternative valuations that corroborated your
7 valuation, and we have now looked at your secondary damages
8 figure based on the Lotus conditional bid, and why you think
9 that is a cleaner way to approach it. We have now just
10 talked about your notion and your understanding of the
11 causation and why the allegations asserted by Microsoft
12 don't really explain the loss in value to Novell.

13 Now let's turn to the two alternative, the east and
14 west of the mountains, if you will, damage estimates that
15 you come up with. The first one is based on the October 6,
16 1995 financial amount.

17 Can you explain this?

18 A. Yes, and we are more than halfway through.

19 On October 6, 1995 Novell released a press release to
20 the market, and I think I actually had it at some point.

21 MR. TASKIER: May I approach, Your Honor?

22 BY MR. TASKIER

23 Q. I think that is Plaintiff's Exhibit 335.

24 A. Yes.

25 Q. Is this what you're talking about, Doctor?

1 A. This is it. Can we kind of narrow it down on the
2 screen a little bit? That is good. All right.

3 This is a press release. As you can see it is October
4 6, 1995. And the heading actually is Novell announced its
5 fourth fiscal quarter earnings below expectations. Indeed,
6 if you track down to -- here we go -- yes, the company said
7 preliminary indications based on the first two months of the
8 quarter are that its WordPerfect family of personal
9 productivity applications products could deliver more than
10 75 million.

11 THE COURT: Did you say deliver? I am sorry.

12 THE WITNESS: Decline. My apologies.

13 Could decline more than 75 million from the 134
14 million contributed by applications the year before.

15 That is really the first part of this
16 announcement, and what it is saying is we made less money in
17 this quarter than we thought we were going to make and that
18 the market thought we were going to make. Now, the amount
19 of that less money can be calculated by looking at its
20 earnings announcement, and it is about -- I think doctor --
21 BY MR. TASKIER

22 Q. Hubbard.

23 A. Dr. Hubbard and I have agreed on this. It is about \$41
24 million. Not a small amount, but what Novell is essentially
25 announcing here is we have \$41 million less in the bank than

1 we thought we had.

2 Now, if that was the end of the story what I would
3 expect to see, when I look at the stock market valuation, I
4 would expect the stock market to say, okay, the company is
5 worth \$41 million less than I thought it was. We're going
6 to drop the value of the shares by \$41 million.

7 But, as it turns out, they dropped it by a lot more
8 than that, and the reason why they dropped it more than that
9 is down in here, which is they said Novell applications
10 designed specifically for this new operating system, Windows
11 95, are not available today but are expected to ship early
12 in 1996.

13 Q. Why is that significant?

14 MR. JARDINE: Your Honor, I move to strike his
15 answer that the reason the market fell was that, and he is
16 going to give us his opinion why it --

17 THE COURT: According to his opinion the reason
18 the mark fell we'll strike.

19 MR. JARDINE: Thank you, Your Honor.

20 THE COURT: And that it was because of the late
21 delivery.

22 THE WITNESS: I am sorry?

23 THE COURT: You're good. It is just that
24 everybody recognizes that this is your opinion.

25 THE WITNESS: Yes.

1 THE COURT: It will be for the jury to determine
2 what the reason was.

3 BY MR. TASKIER

4 Q. Why was that significant in your opinion?

5 A. Well, that is significant in my opinion because, as I
6 think we may have already talked about, it is really
7 important when Windows 95 comes out. To come out with your
8 application, you know, within some reasonable time period
9 that you're willing to make. If you're too late you're
10 really going to miss the boat. The boat sales or the train
11 sales, or what the analogy is, you know, it does not come
12 back for you, because once people have switched to some
13 other application, as I said before, you're never going to
14 get them back again.

15 So I think everybody at WordPerfect and everybody
16 realized the really crucial importance of getting their
17 suite out or their product out for WordPerfect 95, you know,
18 as soon as possible and certainly within some reasonable
19 time period, you know, 30, 60 something days of the release
20 WordPerfect 95 in August. That was a really important thing
21 that everybody knows. It is a very important consideration,
22 and here we have in October 6, 1995 Novell finally
23 announcing that they're going to not be able to ship until,
24 quote, early in 1996.

25 Q. Did your look at the stock market effect? The effect

1 on the stock market of that announcement?

2 A. Yes, I did.

3 Q. What did you find?

4 A. The stock market fell by about -- do we have the slide?
5 Here we are. Good. We are back to this.

6 This is our last event, and it is apparently in green,
7 and what you can see is it is pretty sizable. On October 6,
8 1995 Novell comes out with an earnings announcement and its
9 delay and the stock price falls by over a million dollars.

10 Q. Over a billion did you say?

11 A. Over a billion.

12 THE COURT: The stock price doesn't, but the total
13 value --

14 THE WITNESS: I am sorry. Yes. That would have
15 been -- my apologies.

16 MR. TASKIER: Thank you, Your Honor.

17 THE WITNESS: That would have been a great time to
18 short.

19 THE COURT: Yes, it really would.

20 BY MR. TASKIER

21 Q. The total value of Novell's stock fell by over a
22 billion dollars?

23 A. That's right. Yes. What I did -- here it is again.
24 We have blown it up a little bit, but you can see it comes
25 down like this. The total loss in market value was 1.77

1 billion for these two days. The \$41 million I have to
2 subtract that out, because that is not apparently due to the
3 lack of the Windows 95 product, that is lower sales for,
4 say, Perfect Office.

5 And so what I'm left with is \$1.136 billion in
6 unexplained fall in the value. What I'm saying is to me it
7 is reasonable that that fall in value was due to the
8 announcement to the market that Novell was now going to be
9 seriously late in coming up with its application for Windows
10 95, and that the market may not have known why that was
11 happening. They may not have known anything at all about
12 namespace extensions or what Microsoft -- or anything like
13 that. Basically all they know is that on October 6, 1995
14 this announcement says we're going to be late. The market
15 looked at that and said what is going to be the cost to
16 Novell of doing that? How is that going to effect
17 applications revenue and profits? They drop the value of
18 the stock by over a billion dollars.

19 That billion dollars provides another estimate of what
20 the market thought the delay was going to cost Novell. And
21 that in turn is related to the point of the namespace
22 extensions. So in that sense it becomes another way of
23 asking do we have a number from the financial markets that
24 estimates the impact of what Microsoft did in pulling these
25 namespace extensions?

1 Q. Does this estimate rely on the ability of the financial
2 markets to accurately evaluate the effects of that?

3 A. Yes, it certainly relies on their ability to assess the
4 effects of the late -- to this market or the expectations of
5 being late to the market. And so while it does, again, rely
6 on financial markets, it is a much quicker and more direct
7 way of getting there than going through multiple event
8 studies in order to figure out what the overpayment looks
9 like. So it gives me another way of saying am I coming up
10 with what looks like a reasonable number?

11 Q. Let's just revisit it. In March of 1994 there was the
12 announcement that Novell was buying WordPerfect and
13 QuattroPro, and the stock on that announcement fell by your
14 calculation somewhere between 1.7 and \$1.9 billion?

15 A. Correct.

16 Q. And there is a difference of opinion between you and
17 Dr. Hubbard as to whether that is attributable to
18 overpayment for WordPerfect and QuattroPro, that is his
19 position, or a loss of focus on the part of Novell's
20 management on its core business, the NetWare business.

21 Does this stock price decline have any bearing on your
22 analysis and your determination that it was focused on
23 the loss of focus issue?

24 A. I think it provides you with a metric to test our two
25 hypotheses. There are two hypotheses and you try to find a

1 test for those hypotheses. You know, the way I see what
2 happened here, the way I interpret it as an economist, is
3 that if we ask the question when did the market really first
4 discover the effects of Microsoft's bad acts? I think that
5 the answer is largely that they discovered it on October 6,
6 1995 when they discovered that this application was going to
7 be late to the market. Okay.

8 Now, so I would say that that is where the market
9 values the effects of the bad acts. All right. Now, what
10 does that mean in terms of the other events? The
11 implication is that if we look at the fall in Novell's value
12 at the time of the acquisition, then I see that as primarily
13 a concern or a lack of focus. In other words, the fall that
14 we see in March of 1994 is not a fall in the value of the
15 applications, it is the market's fall in the value of
16 NetWare, because Novell is not going to focus on its NetWare
17 product, and it is not going to make as much money in
18 NetWare. Okay.

19 So the March of '94 fall is really a NetWare problem.
20 Okay. What happens in October of 1995 is the market
21 discovers that we now have an applications problem. That is
22 the way I see it, and that is why it is also true that when
23 the focus problem is partially solved by the sale, what we
24 see is we see a recovery back up again. Okay. So that is
25 the way I see what is going on here.

1 And the contrasting explanation is that the fall in the
2 value of the acquisition in March of 1994 was due to
3 overpayment for applications, so what that story says is it
4 was in March of '94 that the applications effect hit. Well,
5 you know, if the value of Novell fell in March of '94 by
6 over a billion dollars because the market basically wrote
7 down completely the value of the applications, down to
8 something like \$200 million, then you're stuck with the
9 question of what happened in October of 1995? Because if
10 the market had already written off all these applications in
11 Novell's hands as useless, they didn't need the information
12 in October of '95. They already knew that these
13 applications were no good. There would be no reason for the
14 value of the stock to fall.

15 Essentially you have to explain why the shares would
16 fall over a billion dollars on October 6, 1995, when news of
17 the delay came out, if you already thought that that was
18 already baked into the value of the stock way back in March
19 of 1994.

20 Q. I think that makes that pretty clear. Let's talk
21 about --

22 MR. TASKIER: Maybe it doesn't, Judge.

23 THE COURT: No. No. What you think is pretty
24 clear, probably if I was Mr. Jardine I would want to object
25 to, but I will resist.

1 Just move on.

2 MR. JARDINE: I am trying to give Mr. Taskier some
3 leeway, Your Honor.

4 THE COURT: The question is what the jury is going
5 to think in the final analysis.

6 BY MR. TASKIER

7 Q. Thank you.

8 Let's talk about this last approach, the forecast of
9 revenue and profits.

10 Does this approach depend on an analysis of the
11 movement of financial markets?

12 A. No, it does not.

13 Q. Can you tell the jury what this approach is and how you
14 went about doing it?

15 A. I will try to do this pretty quickly.

16 What this approach is, as I mentioned before, is it
17 tries to look at where Novell was before the introduction of
18 Windows 95, and look at that position and then say, you
19 know, if we just looked at where they were before the
20 release of Windows 95, how would we expect them to do in the
21 future if nothing bad had happened to them? This is the
22 but-for world.

23 What I did to do that is I tried to look at the
24 experience of other software firms that were in a similar
25 position to WordPerfect in its market. That is the

1 question, you know, what happened to the market share of
2 those firms typically after Windows 95 was introduced?

3 And so to look at what happened to their shares
4 typically, and from that try to go to what would have
5 happened to WordPerfect's revenues. What would have
6 happened to the profits? What would have happened to the
7 value of WordPerfect if, in fact, they had behaved as they
8 would have expected to behave before the introduction of
9 Windows 95?

10 Q. So you start with what happened to WordPerfect before
11 Windows 95 was released and then after?

12 A. Yes.

13 Q. Do you have a chart to show that?

14 A. Yes, sir. Well, you have seen variants of this. This
15 is the earnings by quarter, in case you're looking at the
16 numbers on the side, this is each quarter of the revenue of
17 the Novell and Corel business applications. Novell is in
18 blue and Corel is in red. We have, of course, the event
19 here which is the launch of Windows 1995.

20 What I have here is I have a base period for the launch
21 of Windows 95, which is through the first half of Windows
22 95. So I'm going to begin with sort of right in here, and
23 then what I'm going to try to do is I'm going to
24 construct -- I'm going to go look at a set of comparable
25 companies. I have 25 comparable products. And I ask the

1 question to get some comparison, what happened to the shares
2 of the number two firm in this market? What I'm assuming is
3 that this is a market in which Novell was and would continue
4 to be number two, and Microsoft would continue to be number
5 one, and what would typically happen to the market share and
6 the sales of the company that was number two in a bunch of
7 software markets? I have about 25 software products.

8 So what I did is I did that and I looked at the
9 average, and I used that to project out what one would have
10 expected, based on these other companies, what you would
11 expect to have happened if you were standing there, you
12 know, before the launch of Windows 95 and said I want to
13 forecast into the future for this company.

14 Q. Did you do that?

15 A. Yes.

16 Q. Do you have a chart that shows that?

17 A. Yes. That is our green line here.

18 Now, one thing to note is that in my estimations of
19 seconds, what I have is that WordPerfect's -- sorry,
20 Novell's share falls, the number two firm, and the share of
21 the number two firm in an industry like this tends to fall
22 somewhat over time, but the market itself is going quite
23 rapidly. So even though I'm projecting a fall in Novell's
24 share, I am still picking up an increase in sales.

25 The green line is that forecast based on what was

1 happening to other companies, and the red, of course, is
2 what actually happened to Corel. As you can see, it was
3 quite a difference.

4 Q. To be clear, you have taken 25 other software company's
5 products --

6 A. Yes.

7 Q. -- that are in second place, similarly situated to
8 Novell and WordPerfect, and you have projected those
9 companies because those companies were stock companies that
10 had any anticompetitive effects by Microsoft?

11 A. That is right. That is my control group, which is
12 people that have not been conducted by the bad conduct.

13 Q. So you project as a forecast what would have happened
14 in the but-for world to Novell if Microsoft had not
15 de-documented the name space extension APIs?

16 A. Exactly.

17 Q. And that is the market share that you believe Novell
18 would have had, sales revenue market share that Novell would
19 have had?

20 A. That is the sales revenue, yes.

21 Q. I notice that your chart ends in 2002. Does that mean
22 that Novell's productivity applications would have stopped
23 generating revenue?

24 A. No. 2002 is there because that is the end of the
25 analysis that I have, but what I do technically, and I don't

1 want to spend too much time on this, is I come to 2002 and I
2 have to calculate what is basically called terminal value.
3 It is what the business would have sold for in 2002.

4 And then what I have to do is I have to take all of
5 this back to 1996 when they actually sold to Corel. So I'm
6 going to take that terminal value, and I am going to take
7 the net profits after taking out for costs and things like
8 that, I am going to take my net profit back to get to what
9 that flow of profits would have been worth in 1996. You
10 know, the valuation in 1996, and what they should have been
11 able to sell it for, when instead what they sold it to Corel
12 for in '96. The difference between that then becomes an
13 alternative measure of damages. That is the \$1,000,119,000
14 on the right.

15 Q. How do you go from these revenues in the but-for world
16 to lost profits?

17 A. Well, you have to -- it is a multi step. I have
18 revenues and I have to take the revenues, and from revenues
19 I have lost profits, and that means I have to subtract out
20 incremental costs, because the stuff has cost us. So what I
21 do is I try to estimate the relationship between revenues,
22 incremental revenues and incremental profits or incremental
23 costs, and this is an industry in which the increment margin
24 or the gross margin, however you want to think of it, is
25 very, very high. You know, most of costs of software are,

1 you know, writing the software, so when you sell more
2 software the costs that you incur are the packaging and the
3 distribution and the support costs. Generally speaking
4 those are like often only about 20 or 30 percent of the
5 total costs.

6 Once you have got the product, you know, there the
7 incremental margin is pretty high. A very high share
8 normally of any increase in revenue is going to go straight
9 to the bottom line. In this particular case I estimated
10 that relationship in several ways, and the most conservative
11 number I can come up with is the incremental margin I think
12 of about 45 percent. That is well below the margin that
13 Mr. Riggs had, for example, in Office in '85, and I think
14 Mr. Gates made the comment that the margins in this industry
15 are usually around 70 percent. I am trying to be very, very
16 conservative in moving from revenues to profits.

17 Q. Is that the Raikes e-mail to Warren Buffet -- 360 -- is
18 this what you relied on?

19 A. Yes, that is it. That was the Raikes memo that I had
20 up before.

21 Q. And he relates an 85 percent profit margin?

22 A. Exactly. I used, I think, about 45 percent.

23 Q. When you decrease your profit margin less than 85
24 percent, what does that do to damages?

25 A. That means that my number is much lower, because the

1 revenues are going to a much lower amount of profits because
2 I have assumed costs are really much higher. Even when I do
3 that, I still come up with a number of \$1.119 billion.

4 Q. So that is the last number on your hardboard chart,
5 \$1.119 billion from the forecast of revenue profits in this
6 but-for world?

7 A. That is correct.

8 Q. Now, did you do any other analysis to determine what
9 other factors might have explained how Novell's share
10 resolved, compared to the second place product analysis that
11 you put up in front of the jury just now?

12 A. I did a somewhat more complicated version. In this
13 version I simply looked at the average experience of second
14 place firms, and used that to project out my sort of what
15 would have happened but for Novell, but I also used a more
16 complex approach, an -- model or a regression model --

17 Q. Say that again. I didn't hear it.

18 A. I'm sorry. Maybe I should hold that.

19 I constructed a statistical model which enabled me to
20 take into account a number of other factors that might have
21 effected -- and so I constructed that model and came out
22 with an estimate of the projection or forecasts of sales
23 revenues and profits, and that was a little bit lower, I
24 think somewhere around 970 million.

25 Q. Did that give you confidence with respect to your

1 forecasts?

2 A. Well, you know, the issue that you're trying to address
3 is, is there something else that could explain what is going
4 on. And so as a statistical matter I try to take into
5 account a number of other factors that might have effected
6 the valuation and, you know, when I put all of those in I
7 get a slightly smaller number.

8 Q. I think we are almost done, Dr. Warren-Boulton.

9 Let's just quickly look at your hardboard chart and
10 tell the jury your views of these damages numbers and which
11 you think should control.

12 A. Well, I am an economist and, you know, I have a belief
13 in the ability of financial markets to rapidly and correctly
14 evaluate information. And as a result my primary choice
15 would probably be the purchase versus sales using the
16 financial market of 976.

17 On the other hand, I am a perfectly reasonable person,
18 and I could say I don't have that much faith in the ability
19 of financial markets to do all of this complicated analysis
20 accurately and, you know, what I would rather do is I would
21 rather rely on Lotus Management and Lotus Management's
22 estimate of what the value of these assets were worth when
23 Novell bought them. In that case I think one would go with
24 the Lotus bid of 1.229.

25 I think the other two are essentially, once again,

1 corroborative. They each are done basically so that I can
2 get a feeling for it, or if I do it in different ways do I
3 get a number that is very, very different, which is going to
4 create concerns for me. The short answer is that because I
5 have these other ways of looking at estimating damages, it
6 really just gives me as an economist, you know, a real
7 confidence that my estimate of 976, you know, is a
8 reasonable estimate.

9 MR. TASKIER: Thank you, Dr. Warren-Boulton.

10 Your Honor, I pass the witness.

11 THE COURT: Mr. Jardine, if I were you I would
12 like a break now, but their lunches haven't been arriving
13 until about a quarter of.

14 Do you mind getting started?

15 MR. JARDINE: I will do it either way, but I do
16 have a motion to make outside the presence of the jury, Your
17 Honor. Whatever you want to do. I can start.

18 THE COURT: Why don't you approach the bench.

19 (WHEREUPON, a bench conference was begun.)

20 MR. JARDINE: Your Honor, there are a number of
21 points on which he has testified to facts that were not
22 presented by Novell in its case in chief.

23 THE COURT: Which ones?

24 MR. JARDINE: Well, I would say on this last
25 thing, I think he testified with respect to Dr. Alepin, and

1 he never testified as to when the product would be ready,
2 and I will deal with that on cross, but he testified with
3 respect to Unix and he testified with respect to -- I am
4 drawing a blank here -- with respect to a lot of delay, the
5 delay to Windows, and I could make a list, but --

6 THE COURT: The one that struck me, and I just
7 assumed I missed it, was the decreased functionality.

8 MR. JARDINE: I don't remember that.

9 MR. TASKIER: I disagree with you, Mr. Jardine.

10 THE COURT: I don't think it is there.

11 I am overruling the objection. I think that that
12 struck me, but I assumed my recollection was faulty, and
13 Mr. Taskier wouldn't have it on the chart unless it was
14 there.

15 MR. TASKIER: I would not have elicited it, Your
16 Honor, unless --

17 THE COURT: As far as the other --

18 MR. JARDINE: I agree that that is one of the
19 points, but I just wanted to have this for the record.

20 THE COURT: No.

21 MR. JARDINE: I am willing to start now.

22 MR. TASKIER: Thank you, Your Honor.

23 (WHEREUPON, the bench conference was concluded.)

24 THE COURT: Mr. Jardine has said he is willing to
25 start, and that is very nice of him, so let's go about ten

1 minutes.

2 MR. JARDINE: I am going to hand Mr. Taskier a set
3 of the slides we'll use.

4 THE COURT: Of course.

5 MR. TASKIER: Thank you.

6 CROSS-EXAMINATION

7 BY MR. JARDINE

8 Q. Good morning, Mr. Warren-Boulton. My name is Jim
9 Jardine. We have never met before. I am one of the lawyers
10 for Microsoft. I am sorry we have to become acquainted in
11 this setting.

12 A. It is good to meet you anyway.

13 Q. I would like to explore with you through the course of
14 my examination some of the assumptions and judgments and
15 choices that you made in constructing your model, but I
16 would like to go back for a few minutes to the beginning of
17 your testimony and your qualifications.

18 I don't believe, and I may not have heard it, that Mr.
19 Taskier asked you what your hourly rate is for the work
20 you're performing for Novell.

21 A. No, he did not.

22 Q. What is that rate?

23 A. \$700 an hour.

24 Q. I think you testified that you're at MiCRA and have
25 been there since you founded it in 1989, or was it '91?

1 A. 1991.

2 Q. And is the primary focus of your professional activity
3 providing expert testimony in litigation?

4 A. I would say that is the majority of it, yes.

5 Q. I was not clear about this, but in how many cases have
6 you testified actually at a trial as an expert witness?

7 A. I --

8 THE COURT: One too many.

9 THE WITNESS: Yes.

10 BY MR. JARDINE

11 Q. I don't need an exact number.

12 A. I don't know. Ten.

13 Q. How many of those have been against Microsoft?

14 A. One.

15 Q. When you agree to serve as an expert witness, when you
16 undertake that assignment, given the number of choices and
17 judgments that you have to make in the course of
18 constructing your models or methods, do you think it is
19 important to approach that assignment with an open mind?

20 A. Of course.

21 Q. And to try to make judgments when you're faced with
22 them as an economist as objectively as you can?

23 A. I should hope so, yes.

24 Q. Do you consider yourself a person that has a bias
25 against Microsoft?

1 A. No. I can explain why.

2 Q. Did you once say to a jury, and I quote -- excuse me, a
3 reporter, and I quote, that Gates is like smallpox. You
4 have to go in there and you have to nail it. If you leave
5 it lying around, it will just come back?

6 A. I don't remember saying that, but that is quite a
7 statement.

8 MR. JARDINE: Your Honor, may I approach the
9 witness?

10 THE COURT: Yes.

11 BY MR. JARDINE

12 Q. Dr. Warren-Boulton, this a copy of a column or an
13 article in The New York Times dated January 21, 1998 by
14 Maureen Doud. If you will turn to the second page, in the
15 third paragraph, do you see Mr. Gates, it begins with
16 Mr. Gates?

17 A. Has gone from?

18 Q. Yes. It reads, Mr. Gates has gone from Horatio Alger
19 similes to virus similes. Frederick Warren-Boulton, another
20 antitrust expert, told The New Yorker, quote, Gates is like
21 smallpox. You have to go in there and you have to nail it.
22 If you leave lying around, it will just come back, close
23 quote.

24 Does that refresh your recollection that you made such
25 a statement to a reporter?

1 A. Well, first of all, I certainly don't remember making
2 the statement to a reporter, and I can't guarantee that it
3 is the right statement, but this is apparently a report by a
4 reporter. The lesson being, you should never talk to
5 reporters.

6 Q. Do you see yourself as someone, to use your words, who
7 is trying to nail Mr. Gates or Microsoft?

8 A. No, not at all.

9 Q. I think you testified that you prepared a report as
10 part of the litigation process that summarized your opinions
11 about damages.

12 A. That is correct.

13 Q. And then Professor Hubbard, whom you have described,
14 prepared a response to your report?

15 A. That is correct.

16 Q. And then you prepared a reply to his?

17 A. That is correct.

18 Q. And that would contain the opinions that you have
19 rendered today?

20 A. Yes.

21 Q. Right. We did receive some additional opinions, some
22 things that you have added to a revise on Monday of this
23 week, correct?

24 A. I think there are some minor revisions, yes.

25 Q. For instance, the second line of your estimated damages

1 chart had not been provided in your report. That was
2 something that was provided to us Monday, correct?

3 A. That is correct, although you can obviously figure that
4 out pretty simply from what is in the report.

5 Q. I hope I can. We'll see.

6 A. Yes.

7 Q. Now, as I said, I would like to go through your
8 approaches and the assumptions and choices that you have
9 made, but as you noted, and I just want to again note,
10 Professor Hubbard disagrees with you in a number of places,
11 and I will try to highlight the differences as we go
12 through, but I want to just note the appropriateness of your
13 comment that I hope the jury will wait to hear his
14 explanations for why he made the choices that he did.

15 A. Of course.

16 Q. Now, I think, if I understood it, you're offering
17 opinions on two things.

18 MR. JARDINE: If I could have Mr. Goldberg pull
19 up --

20 BY MR. JARDINE

21 Q. Well, I'm not going to use your slide.

22 I understand that one of the things that you were asked
23 to provide an opinion on, the primary thing was to estimate
24 the amount of monetary damages to the Novell WordPerfect
25 office productivity applications business during the period

1 that Novell owned it, which would have been June of 1994
2 through March of 1996?

3 A. I was asked to estimate the change in the valuation,
4 yes.

5 Q. To be clear, I think you said that you are not offering
6 any opinion as to liability?

7 A. That is correct.

8 Q. By that we mean you're not offering any opinion as to
9 whether or not the acts you were asked to assume as
10 anticompetitive were in fact anticompetitive?

11 A. My understanding is that that is the responsibility of
12 Dr. Noll.

13 THE COURT: It is actually the responsibility of
14 those 12 people sitting over there.

15 THE WITNESS: It was his task and your
16 responsibility.

17 MR. JARDINE: Let me ask Mr. Goldberg if he will
18 put up the third slide you were shown, Microsoft's
19 anticompetitive conduct harmed Novell by --

20 BY MR. JARDINE

21 Q. As to paragraph number one, I understand, Dr.
22 Warren-Boulton, that you are not offering any opinion as to
23 whether the delay in the release of products by Novell was
24 due to actions by Microsoft?

25 A. As an economist I find that perfectly reasonable, but

1 you're correct in saying that I'm relying on the testimony
2 of the fact witnesses in this case.

3 Q. All right. And in your report, as I understand it,
4 your methods and approaches assume -- you assume that but
5 for the withdrawal of the documentation of the namespace
6 extension APIs Novell would have released its Windows 95
7 product at least by September of 1995?

8 A. Yes. At least close enough to the release of Windows
9 95 so that there would not be a substantial effect on their
10 sales, yes.

11 Q. And you're not offering any independent opinion about
12 that fact. As I understand it, you have relied on Mr.
13 Alepin?

14 A. Well, at the time I relied on Mr. Alepin. Since then
15 we have had the testimony of Mr. Harral and Gibb and
16 Richardson. I would say at this point what I am relying on
17 is the testimony of those three witnesses.

18 Q. Are you relying on anything Mr. Alepin testified to
19 with respect to that?

20 A. I think that Mr. Alepin in turn presumably is relying
21 on his own work and on the testimony of the fact witnesses.
22 I would say that we have three fact witnesses who were there
23 and went through the whole experience at the time, and that
24 is why I would say that those were the people on the ground
25 and they are the people who were there. You know, I would

1 tend to personally rely on the testimony that was given here
2 by Mr. Harral, Gibb and Richardson.

3 Q. If I understood your answer there is not anything that
4 Mr. Alepin testified to at the trial with respect to whether
5 or not these products would have been to market by at least
6 September of 1995 for purposes of your opinions?

7 A. That is correct.

8 Q. Now, the second point of this slide is it talks about
9 reducing the functionality and performance of the
10 applications that were eventually released in May of 1996.
11 I gather you have done no independent study or investigation
12 with respect to that?

13 A. That is correct. Once again, I think the people who
14 know the most about that are the fact witness who have
15 testified.

16 Q. And are you relying with respect to that assumption on
17 any testimony Mr. Alepin offered at the trial before this
18 Court?

19 A. Not to my knowledge, no.

20 THE COURT: Let me just say that I honestly don't
21 remember that, but it is your recollection is what controls,
22 and Mr. Taskier says that Mr. Gibb testified to that, and
23 obviously your recollection is going to control and I have
24 no doubt with what Mr. Taskier told me. I am just telling
25 you that I don't remember that, but it is your recollection

1 that controls.

2 MR. JARDINE: Your Honor, I am ready to transition
3 to a new subject.

4 THE COURT: Why don't we stop for lunch and we'll
5 see everybody at five after 12:00.

6 (Recess)
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